IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9392 OF 2004

Babulal Motilal Oswal : Petitioner

V/s.

Tukaram Keshav Davare & Ors. : Respondents

...

Mr.Uday P. Warunjikar for the petitioner.

Mr.P.K.Hushing for respondent nos.1,2,2A,2B,2D and 3 to 5.

...

CORAM : S.A. BOBDE, J.

June 8, 2005.

P.C.:

1. Rule, returnable forthwith. Mr.Hushing, learned counsel, appears and waives service of rule on behalf of respondent nos.1, 2, 2A, 2B, 2D and 3 to 5.

Heard by consent.

2. The petitioner has suffered a decree of eviction from the suit premises. The decree is obtained by the respondents on the ground of bona fide personal requirements for business purpose. In the appeal filed by the petitioner, he sought an amendment to the Written

Statement, having come to know of certain premises owned by the respondents and the existence of which was not admittedly before the trial Court. The amendment sought reads as follows:-

> "(8)(a) The Plaintiffs are having sufficient premises of their own and in their possession and the Plaintiffs hold the premises of 13’ x 110 and 15’ x 50’ on the ground floor in the property of House No.8, Bhavani Peth, Pune-2 and the respective sons of the Plaintiff No.1 are separate and residing independently by holding respective flats. The plaintiff No.4 is holding the occupancy at Shirur and other Plaintiffs are also having the ample premises elsewhere and also in the property of 8, Bhavani Peth, Pune-2 and as such the Plaintiffs to noy (sic) require any premises in occupancy of the defendant, either reasonable or bonafide and the suit therefore deserves to be dismissed."

3. Subsequent to the application for amendment, the petitioner has also sought to lead additional evidence.

Both the requests of the petitioner have been refused.

4. Mr.Hushing, learned counsel for the respondents, urged that the premises referred to in the proposed amendment are residential premises and the respondents have sought eviction of the premises which are being used for business purpose. This is a matter of evidence and can be urged before the trial Court. In my view, it is not a good enough reason to reject the proposed amendment since it has a direct bearing on the matter in issue. In my view, therefore, the petitioner's application for amendment for inclusion of the aforesaid para and for leading additional evidence in that regard deserves to be allowed.

5. The petition is allowed to the extent indicated above. The appellate Court is requested to dispose of the matter not later than 31.12.2005. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.